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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

F I N A L M I N U T E S

MEETING OF:

**STATE BOARD OF OPTOMETRY
VIA TELECONFERENCE**

TIME: 10:30 A.M.

Thursday, November 5, 2020

1 State Board of Optometry
2 November 5, 2020

3
4
5 BOARD MEMBERS:
6

7 Luanne K. Chubb, O.D., F.A.A.O., Chairperson
8 K. Kalonji Johnson, Commissioner, Bureau of
9 Professional and Occupational Affairs
10 John A. Godfrey, O.D., Vice Chair
11 Kimberly F. Boyer, O.D., Secretary
12 Pamela Barnhart, Office of Attorney General, Consumer
13 Protection Member
14 Jeffrey B. Becker, O.D.
15 Davis C. Haire, O.D. - Absent
16 Perry C. Umlauf, O.D.
17 Carl J. Urbanski, O.D.
18 Denise T. Wilcox, O.D., Ph.D.
19
20

21 BUREAU PERSONNEL:
22

23 Ariel E. O'Malley, Esquire, Board Counsel
24 David N. Smith, Esquire, Board Prosecution Liaison
25 Cynthia K. Montgomery, Esquire, Deputy Chief
26 Counsel/Regulatory Counsel, Department of State
27 Carolyn DeLaurentis, Esquire, Deputy Chief Counsel,
28 Prosecution Division
29 Paul Jarabeck, Esquire, Board Prosecutor
30 Chris Stuckey, Board Administrator
31
32 Theodore Stauffer, Executive Secretary, Bureau of
33 Professional and Occupational Affairs
34 Marc Farrell, Deputy Policy Director, Department of
35 State
36 Andrew LaFratte, MPA, Policy Office, Department of
37 State
38
39

40 ALSO PRESENT:
41

42 Jen Smeltz, Executive Director, Consumer Protection
43 and Professional Licensure Committee
44 Joseph A. Ricci, Esquire, Executive Director,
45 Pennsylvania Optometric Association
46 Tyler Burke, Milliron & Goodman, LLC
47
48
49
50

1 ***

2 State Board of Optometry

3 November 5, 2020

4 ***

5 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
6 10:00 a.m. the Board entered into Executive Session
7 with Ariel E. O'Malley, Esquire, Board Counsel, for
8 the purpose of conducting quasi-judicial deliberations
9 and to receive the advice of Board Counsel. The Board
10 returned to open session at 10:30 a.m.]

11 ***

12 The regularly scheduled meeting of the State
13 Board of Optometry was held on Thursday, November 5,
14 2020. Luanne K. Chubb, O.D., F.A.A.O., Chairperson,
15 called the meeting to order at 10:30 a.m.

16 Cynthia K. Montgomery, Esquire, Deputy Chief
17 Counsel/Regulatory Counsel, PA Department of State,
18 was not present at the commencement of the meeting.

19 ***

20 [Ariel E. O'Malley, Esquire, Board Counsel, noted for
21 the record that the meeting was being recorded and
22 that remaining on the call was giving consent to being
23 recorded.]

24 ***

25 [Chairperson Chubb noted an amendment to the agenda

1 would be to include the sponsorship request to the
2 Pennsylvania State Board for licensure under New
3 Business.]

4 ***

5 Approval of Minutes

6 CHAIRPERSON CHUBB:

7 Has everyone had the opportunity to
8 review the Minutes from the August 20,
9 2020 meeting? Is there a motion?

10 DR. BECKER:

11 I make a motion to approve the Minutes.

12 CHAIRPERSON CHUBB:

13 Thank you, Dr. Becker. Is there a
14 second?

15 DR. GODFREY:

16 Second.

17 CHAIRPERSON CHUBB:

18 Thank you, Dr. Godfrey. Is there any
19 discussion, any additions? Hearing none,
20 all those in favor? Opposed?

21 [The motion carried. Commissioner Johnson abstained
22 from voting on the motion.]

23 ***

24 Report of Board Prosecutor

25 [Paul Jarabeck, Esquire, Board Prosecutor, presented a

1 VRP Consent Agreement and Order for File No. 19-52-
2 017325.]

3 ***

4 [Chairperson Chubb requested that Ms. Stuckey do an
5 official roll call.]

6 ***

7 [Chairperson Chubb requested the introduction of
8 audience members.]

9 ***

10 MOTION

11 CHAIRPERSON CHUBB:

12 Are there any questions? Hearing no
13 questions, I'd like a motion to approve
14 and adopt the Consent Agreement for File
15 No. 19-52-017325.

16 DR. URBANSKI:

17 I move to accept the Consent Agreement
18 for File No. 19-52-017325.

19 COMMISSIONER JOHNSON:

20 Second.

21 CHAIRPERSON CHUBB:

22 Any discussion? All those in favor?
23 Opposed? Any abstentions?

24 [The motion carried unanimously.]

25 ***

1 Report of the Commissioner

2 [K. Kalonji Johnson, Commissioner, had no formal
3 report but welcomed the Board members, members of the
4 public, stakeholders, and members of respective
5 oversight committees. He wished everyone health and
6 safety during these uncertain times.]

7 ***

8 Report of Board Counsel

9 [Ariel E. O'Malley, Esquire, Board Counsel, referred
10 to Item Nos. 3 and 4 on the agenda for review of the
11 Sunshine Act and Recusal Guidelines.

12 She indicated Item No. 5 on the agenda is notice
13 from the Department of Health regarding Acyclovir
14 Ophthalmic Ointment 3% as part of the formulary.

15 Ms. O'Malley referred to Item No. 6, House Bill
16 No. 2561, which has since become Act 99 and will
17 become effective in 60 days. She discussed the
18 process the Board would need to go through to
19 determine the formulary which she stated was similar
20 to before but would not need to be sent up to the
21 Department of Health for approval.

22 Ms. O'Malley stated any input from optometrists
23 across the state regarding the matter could be sent to
24 the Board. It was suggested that Dr. Godfrey and Dr.
25 Boyer compile a list for review by board members at

1 the February meeting.

2 Ms. O'Malley stated a response to an email would
3 not be received in a timely manner before the
4 expedited meeting. She suggested that while both the
5 Board and the POA work on a list, that a newsletter be
6 published at the beginning of the year indicating some
7 of the changes to the Practice Act and request that
8 responses be sent to the Board. There was discussion
9 as to whether or not to include the Department of
10 Health in a decision regarding this matter.

11 Chairperson Chubb was in favor of Dr. Boyer and
12 Dr. Godfrey working with Counsel to have additions to
13 the list without having the Board give final approval
14 for certain medications.

15 Counsel suggested that a motion be made to
16 delegate authority for Dr. Godfrey and Dr. Boyer to
17 come up with additions to the list and to host a
18 committee meeting to vote on it in public session.

19 Dr. Godfrey stated he would be much more
20 comfortable waiting until the February Board meeting
21 to vote on this matter.

22 Jen Smeltz, Executive Director, Consumer
23 Protection and Professional Licensure Committee, noted
24 that with regard to previous discussion about
25 notifying the Secretary of Health, an email was

1 received asking to hold the bill and asking for the
2 Secretary to be added to the Board as a Board member.
3 Ms. Smeltz commented that they are certainly watching
4 to see what the Board will do and may continue to ask
5 to be on this Board.]

6 DR. BOYER:

7 I would move that the committee compile
8 the list to be made available for the
9 next Board meeting in February.

10 CHAIRPERSON CHUBB:

11 Thank you, Dr. Boyer. Is there a second
12 to that motion?

13 DR. GODFREY:

14 I second.

15 CHAIRPERSON CHUBB:

16 Second Dr. Godfrey. Any discussion?

17 Hearing none, all those in favor?

18 Opposed? Any abstentions?

19 [The motion carried. Dr. Umlauf opposed the motion.]

20 ***

21 Legislative Report

22 [Ariel E. O'Malley, Esquire, reported there hadn't
23 been much legislative movement, however HB 1566 was
24 progressing and proposes to provide the Board with the
25 authority to issue advisory opinions and SB 391

1 mirrors HB 2561. She noted additionally that HB 2636
2 was introduced which proposes to prohibit non-compete
3 clauses.]

4 ***
5 Report of Board Chair - No report.

6 ***
7 Report of Regulatory Counsel
8 Ms. O'Malley noted that currently all of the Board's
9 regulations are under departmental review. She
10 referred Board members to Item No. 8 the Contact Lens
11 Rule Amendments for review.

12 Dr. Wilcox noted the fine for not following the
13 contacts lens rule is \$43,500 and was not listed on
14 the website. Ms. O'Malley will edit the website to
15 include that.

16 Dr. Urbanski noted a second attachment under Item
17 No. 6 on the Report of Board Counsel as an email from
18 Joseph A. Ricci, Esquire, Executive Director,
19 Pennsylvania Optometric Association requesting clarity
20 on the DEA registrations which was not addressed.

21 Mr. Ricci commented that many doctors dropped DEA
22 certifications when the opioid drugs and derivatives
23 were removed from the formulary because of the
24 reclassification of those drugs from Schedule III to
25 Schedule II. He stated, since Act 99 had become law

1 and the opioid drugs that were reclassified were again
2 allowed to be included on the optometric formulary,
3 the concern by members was if an applicant sought a
4 new DEA license, would the applicant be required to
5 have opioid education prior to the renewal of licenses
6 in this license cycle.

7 Mr. Ricci opined that Act 99 had not become law
8 until after the licensure cycle closed and, therefore,
9 if a member did not hold a current DEA license, there
10 was no requirement for opioid education.

11 Ms. O'Malley explained that there was not a
12 mechanism after a renewal cycle to have some kind of
13 checkbox to know whether or not the appropriate people
14 obtained appropriate continuing education. Mr. Ricci
15 explained it would not work in that manner. There was
16 further discussion.]

17 ***

18 New Business

19 [Chairperson Chubb stated there would be discussion
20 regarding sponsorship of requests that the State Board
21 has received regarding potential licensees asking for
22 sponsorships through the State Board. She stated a
23 number of requests had been received from nonlicensed
24 people seeking licensure in Pennsylvania or
25 sponsorship to obtain licensure in Pennsylvania versus

1 following through with the regulations as written.

2 DR. URBANSKI:

3 I would make a motion that the Board
4 continue the policy of following the
5 regulations and statutes currently in
6 place to verify the eligibility of an
7 applicant to obtain a license by meeting
8 the outlined requirements. And that we
9 are not in the position to advocate for
10 optometrists to apply for licensure or
11 advocate them to take the national board.
12 And that the Board Administrator and
13 Counsel can reply to requests.

14 CHAIRPERSON CHUBB:

15 Is there a second?

16 DR. BOYER:

17 I second.

18 CHAIRPERSON CHUBB:

19 Thank you, Dr. Boyer. Discussion?

20 [Dr. Wilcox indicated that during her time on the
21 Board years ago, someone from Nigeria applied for
22 licensure and the Board Secretary at the time reviewed
23 the application and allowed her to have licensure
24 without consulting the Board.

25 Ms. O'Malley explained this is a request for

1 sponsorship and not an application.]

2 CHAIRPERSON CHUBB:

3 All those in favor of the motion from Dr.
4 Urbanski? Hearing none, opposed? Any
5 abstentions?

6 [The motion failed unanimously.]

7 ***

8 DR. BOYER:

9 I move to allow the Board staff and Board
10 Counsel to respond to NBEO sponsorship
11 request and to direct applicants to the
12 regulations regarding licensure
13 requirements in Pennsylvania.

14 DR. UMLAUF:

15 I second.

16 CHAIRPERSON CHUBB:

17 Thank you, Dr. Umlauf. Discussion?
18 Hearing none, all those in favor signal
19 by saying aye? Opposed? Any
20 abstentions?

21 [The motion carried. Dr. Wilcox opposed the motion.]

22 ***

23 Election of Officers

24 DR. BECKER:

25 I would like to make a motion to keep

1 the current officers in place.

2 CHAIRPERSON CHUBB:

3 Thank you, Dr. Becker.

4 DR. UMLAUF:

5 I second.

6 CHAIRPERSON CHUBB:

7 Thank you, Dr. Umlauf. Discussion?

8 Hearing none, those in favor? Opposed?

9 Any abstentions?

10 [The motion carried unanimously.]

11 ***

12 Appointment - Act 53 of 2020

13 [K. Kalonji Johnson, Commissioner, Bureau of
14 Professional and Occupational Affairs, had discussion
15 with regard to Act 53 which was signed into law this
16 past June and becomes effective the end of this year
17 which reforms the way that criminal history is used in
18 the determination of licensure. He referred to it as
19 a modernization of the Criminal History Records
20 Information Act (CHRIA).

21 Commissioner Johnson requested the Board's
22 approval of a list prepared by Board Counsel O'Malley
23 and Deputy Chief Counsel Montgomery so that he can
24 move forward with publication before the effective
25 date of the legislation at the end of the year.]

1 ***

2 [Cynthia K. Montgomery, Esquire, Deputy Chief
3 Counsel/Regulatory Counsel, Department of State,
4 entered the meeting at 11:25 a.m.]

5 ***

6 [Cynthia K. Montgomery, Esquire, Deputy Chief
7 Counsel/Regulatory Counsel, Department of State, had
8 discussion with regard to Act 53 of 2020. She
9 indicated that the Commissioner has the requirement to
10 publish a notice of the availability of this list by
11 the December 27 deadline. Ms. Montgomery provided an
12 explanation of the statute and had further discussion
13 of the provisions set forth in Act 53. She noted that
14 after going through the regulatory process there would
15 be public comment and then the matter would be
16 finalized as final rulemaking within two years.

17 Ms. Montgomery explained that the list could be
18 used for three distinct purposes, including
19 preparation of preliminary determinations as to
20 whether a criminal history may be an impediment to
21 licensure, determining which criminal convictions may
22 result in disciplinary action and determining whether
23 the criminal conviction may result in refusing to
24 issue a license.

25 Ms. Montgomery further explained that individuals

1 who are convicted of offenses enumerated on the list
2 are presumed to pose a risk to the public. That a
3 crime not on the list would mean the burden would then
4 shift to the Commonwealth to demonstrate why the crime
5 does pose such a risk. Board members had questions.

6 Commissioner Johnson reiterated for the record
7 that as Counsel has clearly articulated, nothing on
8 the list is a definite preclusion to licensure and
9 something that can't be considered by the Board.

10 David N. Smith, Esquire, Board Prosecution
11 Liaison, if the Board would want to consider unsworn
12 falsification to authorities at 18 Pa.C.S. Section
13 4904. Ms. Montgomery stated that would be a valid and
14 appropriate addition.

15 Ms. Montgomery reiterated the ethnic intimidation
16 offense that was referenced earlier and the Board
17 decided to add it to the list.]

18 ***

19 MS. MONTGOMERY:

20 Would the Board entertain a motion to
21 approve the list with the addition of
22 unsworn falsification to authorities and
23 ethnic intimidation?

24 DR. BOYER:

25 I make a motion that we approve with the

1 addition of ethnic intimidation and
2 unsworn falsification.

3 CHAIRPERSON CHUBB:

4 Thank you, Dr. Boyer. Is there a
5 second?

6 DR. GODFREY:

7 Second.

8 CHAIRPERSON CHUBB:

9 Thank you, Dr. Godfrey. Discussion?

10 [There was further discussion regarding the addition
11 of luring a child into a car.]

12 CHAIRPERSON CHUBB:

13 Dr. Boyer, would you amend your motion
14 to include that?

15 DR. BOYER:

16 I'd like to amend my motion with the
17 addition of luring a child into a motor
18 vehicle or structure.

19 CHAIRPERSON CHUBB:

20 Second?

21 DR. GODFREY:

22 I second.

23 CHAIRPERSON CHUBB:

24 Discussion? All those in favor, signify
25 by saying aye? Opposed? Any

1 abstentions?

2 [The motion carried unanimously.]

3 ***

4 Miscellaneous - None

5 ***

6 Public Comment Period - None

7 ***

8 Adjournment

9 [There being no further business, the State Board of
10 Optometry Meeting adjourned at 12:08 p.m.]

11 ***

12 CERTIFICATE

13

14 I hereby certify that the foregoing summary
15 minutes of the State Board of Optometry meeting, was
16 reduced to writing by me or under my supervision, and
17 that the minutes accurately summarize the substance of
18 the State Board of Optometry meeting.

19

20

21



22

Kelly Gallick,

23

Minute Clerk

24

Sargent's Court Reporting

25

Service, Inc.

STATE BOARD OF OPTOMETRY
REFERENCE INDEX

November 5, 2020

	TIME	AGENDA
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7		
8	10:00	Executive Session
9	10:30	Return to Open Session
10		
11	10:30	Official Call to Order
12		
13	10:31	Approval of Minutes
14		
15	10:32	Report of Board Prosecutor
16		
17	10:33	Roll Call/Introduction of Audience
18		
19	10:35	Motion
20		
21	10:37	Report of Commissioner
22		
23	10:38	Report of Board Counsel
24		
25	11:04	Legislative Report
26		
27	11:08	Report of Regulatory Counsel
28		
29	11:15	New Business
30		
31	11:20	Election of Officers
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33	11:22	Appointment
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35	12:08	Adjournment
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